(1)

88-377

NO. _____

Supreme Court, U.S.
FILED
JUL 30 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

ROBERT A. FRAYCHINEAUD, JR.,
APPELLANT

VS

CITY OF NEW ORLEANS
APPELLEE

ON APPEAL FROM THE SUPREME
COURT OF THE STATE OF LOUISIANA

JURISDICTIONAL STATEMENT

R. A. Fraychineaud, Jr.
In Proper Person
7401 Alabama Street
New Orleans, LA 70126
504-242-0260

JULY, 1988

QUESTION PRESENTED

1. Whether compelling a defendant to trial and the sentencing hearing in a state criminal prosecution without the assistance of any counsel, bar licensed or not, violates the defendants' guaranteed right to enjoy the assistance of counsel in a criminal prosecution.

2. Whether a defendant can be convicted of a crime; put in jail, and have a fine imposed upon him while being denied his right to enjoy the assistance of counsel.

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Appellant appeals from the final order and judgment of the Supreme Court of Louisiana entered on April 29, 1988, denying appellant's appeal and affirming his January 14, 1987 conviction and sentence imposed on January 20, 1987 by the Traffic Court, City of New Orleans, Orleans Parish, Louisiana.

Opinions Below

The April 29, 1988 opinion of the Supreme Court of Louisiana which is officially reported as 523 So.2d 1319, appears as Appendix A to this Jurisdictional Statement.

The January 14, 1988 opinion of the Court of Appeals, Fourth Circuit, State of Louisiana which is not designated for publication appears as Appendix B to this Jurisdictional Statement.

JURISDICTION

This is an appeal from the final judgment of the Supreme Court of Louisiana entered on April 29, 1988, denying appellant's appeal. Throughout the state court proceedings the validity of a decision by the trial court, which convicted appellant criminally without the assistance of counsel, has been brought into question. This Court has jurisdiction of this appeal by virtue of 28 U.S.C. 1257 (1), 28 U.S.C. 1257 (2), and Greenough v Tax Assessors, 331 US 486, 497; 91 L.Ed. 1621; 67 S.Ct. 1400, (1946).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the Constitution of the United States provides, in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of Counsel for his defence."

STATEMENT OF THE CASE

At all hearings prior to January 14, 1987 appellant enjoyed the assistance of counsel whom he had furnished and in whom he had trust and confidence.

On the morning of January 14, 1987, the date set for trial, appellant approached the bench; informed the court he was without his assistant and requested a continuance. (Transcript of January 14, 1987 proceedings, page 4, lines 1-25; Docket No. F-856935-36; Traffic Court, Parish of Orleans, State of Louisiana.)

Appellant also informed the court that he was without assistance of any kind, either bar approved assistant or lay assistant, and requested a continuance. (Transcript, supra, page 6, lines 13-23)

The trial judge while holding a folder up so that it was clearly visible, stated that the appellant was more than prepared to move forward based on the

paperwork he had filed.

The trial judge denied the request for continuance and directed the appellant to sit down and stated that the case was going to be tried on that day. Appellant objected to moving forward without the assistance of counsel of any kind, and refused numerous times to participate in the proceedings. The appellant informed the court that he did not want to be represented by anyone during the proceedings; that he wanted the assistance of his assistant. (Transcript of January 14, 1987 proceedings, page 6, lines 13-25, page 7, lines 1-19; Docket No. F-856935-36; Traffic Court, Parish of Orleans, State of Louisiana.) The proceedings moved forward, over appellant's objections and without his participation.

Appellant was found guilty by the trial judge. Sentencing was deferred until January 20, 1987.

On the morning of January 20, 1987 appellant appeared in Division "B" of Traffic Court for the City of New Orleans as required. Appellant approached the bar; informed the court that he was without the assistance of counsel of any kind, and was not prepared to move forward. The court advised appellant that it was moving forward, to which the appellant strenuously objected.

The court sentenced appellant to fines and court costs totaling $360.00 or 10 days in jail.

Immediately after sentencing, appellant objected and orally motioned the court for an appeal, then was put in jail.

On appeal to the Criminal District Court for the Parish of Orleans of the State of Louisiana, Division "C", judgment of the trial court was affirmed on July 31, 1987.

On appeal to the Court of Appeal,

Fourth Circuit, State of Louisiana, judgment of the trial court was affirmed on January 14, 1988.

On appeal to the Supreme Court of Louisiana, the Court construed the appeal to be either an application for a Writ of Certiorari and/or Review and rendered a one word decision "Denied", on April 29, 1988.

ARGUMENT

Substantiality of the Federal Question

This appeal raises the question of whether a defendant in a state criminal prosecution, being denied the assistance of counsel at both the trial and sentencing hearing, violates the defendants' rights as guaranteed by the Sixth Amendment to the United States Constitution.

In analogous cases this Court has held that a substantial Federal question is raised. Argersinger v Hamlin, 407 US

25, 92 S.Ct. 2006, 32 L.Ed. 530 (1972); Faretta v California, 422 US 806, 95 S.Ct. 2525, 45 L.Ed.2nd 562 (1975); Glasser v U.S. 315 US 60, 62 S.Ct. 457, 86 L.Ed. 680 (1941); Johnson v Zerbst, 304 US 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); Powell v Alabama, 287 US 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932).

The precedents established by this Court not only do not support the decision of the trial court, and the affirmation of this decision by the Supreme Court of Louisiana, but require its reversal.

The cases previously cited clearly indicate that a state criminal defendant, even though the offense may be considered petty, cannot be denied the assistance of counsel. In Argersinger v Hamlin, 407 US 25, 92 S.Ct. 2006, 32 L.Ed. 530 (1972); this court stated (p. 33).

> "The requirement of counsel may well be necessary for a fair trial even in a petty-offense prosecution. We are by no means convinced that legal and

> constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more."

Cf. Faretta v California, 422 US 806, 95 S.Ct. 2525, 45 L.Ed.2nd 562 (1975); Powell v Alabama, 287 US 45, 53 S.Ct. 55, 77 L.Ed. 158 (1932); and Johnson v Zerbst, 304 US 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938).

The trial court erroneously determined that the defendant was adequately prepared and the court was going to proceed even though the defendant was without the assistance of counsel. Also, in Glasser v U.S. 315 US 60, 62 S.Ct. 457, 86 L.Ed. 680 (1941); this court stated (p. 76)

> "The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial."

After denying this appellant his

right to the assistance of counsel, the trial judge moved forward through trial, convicted and sentenced the appellant; all in violation of the Sixth Amendment of the United States Constitution and this Courts' mandate at page 37 of Argersinger v Hamlin, 407 US 25, 92 S.Ct. 2006, 32 L.Ed. 530 (1972) wherein this court stated

> "This is the view of the Supreme Court of Oregon, with which we agree. It said in Stevenson v Holzman, 254 Ore. 94, at 102, 458 P.2d 414, 418:
>
> > 'We hold that no person may be deprived of his liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions, including prosecutions for violations of municipal ordinances. The denial of the assistance of counsel will preclude the imposition of a jail sentence.'"

CONCLUSION

For the foregoing reasons, and the substantiality of the question presented by this appeal, this Court should summarily reverse the decision of the

trial court. In the alternative, this Court should note probable jurisdiction of this appeal and set it down for plenary briefing and argument.

R. A. Fraychineaud, Jr.
In Proper Person
7401 Alabama Street
New Orleans, LA 70126
504-242-0260

JULY, 1988

APPENDIX A

Opinion of the Supreme Court of the State of Louisiana

CITY OF NEW ORLEANS

VS NO. 88-K - 0319

ROBERT A. FRAYCHINEAUD, JR.

- - - - - -

IN RE: Fraychineaud, Robert A. Jr.; Applying for Writ of Certiorari and/or Review; to the Court of Appeal, Fourth Circuit, Number KA-8717; Parish of Orleans Criminal District Court Div. "C" Number 320-692; Orleans Parish Traffic Court Div. "B" Number F-856935-6

- - - - - -

April 29, 1988

Denied.

LFC

JAD

PFC

WFM

JLD

JCW

HTL

Supreme Court of Louisiana
April 29, 1988

APPENDIX B

Opinion of the Court of Appeal

Fourth Circuit, State of Louisiana

NOT DESIGNATED FOR PUBLICATION

CITY OF NEW ORLEANS NO. KA-8717

VERSUS

ROBERT A. FRAYCHINEAUD, JR.

* * *

ON CERTIORARI TO THE
HONORABLE JEROME WINSBERG, JUDGE
CRIMINAL DISTRICT COURT, PARISH OF ORLEANS
SECTION "C", NO. 320-692

* * *

ROBERT L. LOBRANO
JUDGE

(Court composed of Chief Judge James C. Gulotta, Judges Robert J. Klees and Robert L. Lobrano)

Robert A. Fraychineaud, Jr.
In proper person
New Orleans, La. 70126
FOR APPELLANT

BARRIE BYRNES, ASSISTANT CITY ATTORNEY
New Orleans, La. 70119
FOR APPELLEE

AFFIRMED.

JAN 14 1988

Defendant appeals the affirmation of his conviction and sentence by the Criminal District Court, Parish of Orleans. Defendant was convicted in Traffic Court, Orleans Parish, for speeding and no proof of insurance violations.

This court does not have appellate jurisdiction over violations heard by the Traffic Court. La. Const. of 1974, Art. 5, Sec. 10(A). However, we treat this "appeal" as an application for supervisory writs. We deny the relief sought, and affirm defendant's conviction and sentence.

The defendant argues to this court that he was denied his constitutional right to the assistance of counsel guaranteed by the Sixth Amendment to the U.S. Constitution and Art. 1 Section 13 of the Louisiana Constitution of 1974.

The defendant contends that the trial

court erred by denying his oral motion for a continuance thereby forcing him to trial without counsel. First, a motion for continuance must be in writing. C.Cr.P.Art. 707; State v. Wilson, 454 So.2d 383 (La. App. 4th Circ. 1984). Here the defendant made an oral motion for a continuance. Secondly, this motion should only be granted "upon a showing that such motion is in the interest of justice". C.Cr.P. Art. 707. The trial judge's decision to deny a continuance is entitled to great weight on review. State v Robicheaux, 412 So.2d 1313 (La. 1982).

In this case, we find that the interests of justice would not be served by granting a continuance. The defendant was not represented by counsel through the proceedings leading to trial. Prior to trial he requested that a person not licensed to practice law assist him at trial but asked that trial be continued as

this person was unavailable. The defendant does not state how his defense was prejudiced by proceediing to trial without assistance.

This is not a case where a defendant is represented by an attorney licensed to practice law or is requesting a licensed attorney and is forced to trial without representation. See State v. Wisenbaker, 428 So.2d 790 (La. 1983). Here, the defendant knowingly elected to proceed without retained counsel. No constitutional rights are inplicated in this case because there is no constitutional right to be represented by a non-attorney. State v. Taylor, 495 So.2d 966 (La. App. 3rd Cir. 1986); U.S. v. Benson, 592 F.2d 257 (5th Cir. 1979). Again, the defendant does not point to any prejudice suffered because the trial court's denial of his request for a continuance.

We therefore deny defendant's writ application and affirm his conviction and sentencce.